

# ARKANSAS SUPREME COURT

No. CR 07-264

BRUCE JOSEPH TAYLOR  
Appellant

v.

STATE OF ARKANSAS  
Appellee

## Opinion Delivered

PRO SE MOTION FOR EXTENSION OF  
TIME TO FILE APPELLANT'S BRIEF  
[CIRCUIT COURT OF PULASKI  
COUNTY, CR 87-1087, HON. MARION  
A. HUMPHREY, JUDGE]

APPEAL DISMISSED.

## PER CURIAM

A judgment and commitment order entered in Pulaski County Circuit Court on September 15, 1987, reflects that appellant Bruce Joseph Taylor entered a guilty plea to charges of aggravated robbery with a deadly weapon and theft of property and was sentenced to an aggregate term of thirty years' imprisonment in the Arkansas Department of Correction. On November 8, 2006, appellant filed in the trial court a pro se petition for writ of habeas corpus under Act 1780 of 2001 Acts of Arkansas, codified as Ark. Code Ann. § 16-112-201 – 16-112-207 (Repl. 2006). The court denied the petition, and appellant has lodged an appeal of that order in this court. Now before us is appellant's pro se motion requesting an extension of time in which to file his brief.

We dismiss the appeal as it is clear that appellant cannot prevail. This court has consistently held that an appeal of the denial of postconviction relief will not be permitted to go forward where it is clear that the appellant could not prevail. *Pardue v. State*, 338 Ark. 606, 999 S.W.2d 198 (1999) (per curiam); *Seaton v. State*, 324 Ark. 236, 920 S.W.2d 13 (1996) (per curiam); *Harris v. State*, 318 Ark.

599, 887 S.W.2d 514 (1994) (per curiam); *Reed v. State*, 317 Ark. 286, 878 S.W.2d 376 (1994) (per curiam). Here, appellant failed to bring a timely action under the act and it is clear that he cannot prevail.

Act 1780 was amended by Act 2250 of 2005, effective August 12, 2005. As revised, section 16-112-202(10) provides that a motion for relief under the act must be made in a timely fashion. Section 16-112-202(10) further provides for a rebuttable presumption against timeliness for any motion not made within thirty-six months of the date of conviction, and lists five grounds by which the presumption may be rebutted. Appellant filed his motion for relief under the act more than nineteen years after his conviction and provides no explanation for the delay.

In order to overcome the presumption against timeliness, a petitioner must establish, in the petition, one of the grounds listed in section 16-112-202(10)(B). *Douthitt v. State*, 366 Ark. 579, \_\_\_\_ S.W.3d \_\_\_\_ (2006) (per curiam). Under the act, a petitioner may establish that his petition is timely through a showing that incompetence substantially contributed to the delay, that the evidence to be tested is newly discovered, or that a new method of technology that is substantially more probative than prior testing is available. A petitioner can rebut the presumption through other good cause, but may not do so solely through an assertion of his innocence and that denial would result in manifest injustice. *See id.* In appellant's petition, he did not assert incompetence, or identify any evidence to be tested or technology to be used, new or established. Nor did he address the delay in any manner.

Rather than identifying any evidence or testing appellant wished to have conducted, the petition asserted various constitutional and procedural violations concerning appellant's plea and later trial resulting in convictions on other charges. Appellant alleged that the fact that the sentences on the later charges were run consecutively with the sentences on the charges concerned here violated a plea agreement or otherwise violated his constitutional rights.

As the petition did not request any specific scientific testing or present a claim under which relief could be granted pursuant to Act 1780, the trial court also addressed the issues as if appellant had requested a writ of habeas corpus under Ark. Code Ann. § 16-112-101 – 16-112-123 (1987). However, the trial court did not have jurisdiction to release on a writ of habeas corpus a prisoner not in custody in that court's jurisdiction. *Pardue v. State*, 338 Ark. 606, 999 S.W.2d 198 (1999) (per curiam). Act 1780 is an exception to that rule, as provided in Ark. Code Ann. § 16-112-124 (Repl. 2006). Appellant was not at the time he filed his petition, and is not now, incarcerated in Pulaski County. Even had appellant requested issuance of the writ under section 16-112-103, the trial court did not have jurisdiction to grant the writ. Accordingly, there is no need to address the issues appellant raised further.

Appeal dismissed.